

Jan 195
THE
C H A R G E *6*
OF

SIR FRANCIS BULLER, BART.

ONE OF THE COMMISSIONERS

APPOINTED FOR TRYING

**ARTHUR O'CONNOR, FAVEY, BINNS,
ALLEN AND LEARY,**

ON A

CHARGE OF HIGH TREASON,

AT MAIDSTONE, ON WEDNESDAY 11th APRIL, 1798,

TO THE

G R A N D J U R Y,

WHO WERE SWORN ON THAT COMMISSION.

D U B L I N:

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SIR FRANCIS BULLER, BART.

The Grand Jury being sworn, Mr. Justice BULLER deliveted to them a charge to the following effect.

“ Gentlemen of the Grand Jury,

“ AS we were convened here under a commission which his Majesty has been pleased to direct for special purposes, and not in the ordinary course of the administration of justice, it may naturally be expected that I should say something on the occasion of our assembling here: to enable me to do so, I have no guide but the commission which I bear for us; depositions are returned according to the universal practice of Courts of Justice in criminal proceedings; probably that has arisen from the circumstance of the indictment for high treason, being now in the course of being prepared by the Officer of the Crown, and not before settled. In many cases, the returns may be very useful; because it is as material in treason as it is in felony, that the Court should see the depositions; to enable them the better to point out the grand features of the case, to present to your consideration the facts and circumstances that are most essential for you to apply your attention to, when you come to consider the effect and the hearing of the evidence.

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" At present, however, I know nothing of the circumstances of the matter that are to be laid before you, except that the offence charged to be enquired into is high treason, and therefore, I can only lay down the law upon that subject from the best authorities, as they are to be found in our books, accompanied with a few observations, with a hope, that some of them may be of use. If they should be applicable to the case that shall appear before you, they will be applied as they shall deserve to be; and if in the course of the proceeding, any question should arise in your minds on which you desire information, you will be pleased to apply to us, and the Court will be ready to give you every assistance in its power.

" Our inquiries, as appears by our commission, are to be confined to high treason, and misprision of treason. It was the happiness of this country, for a series of years, to be almost strangers to the crime of treason, until new principles and opinions were adopted in France, and which have unfortunately misled the minds of unthinking people, and which were broached by the discontented in this country, who have pursued some means which tend to the introduction of the same kind of anarchy and confusion which lately prevailed in France. Powerful as these opinions have been in France, and extensive as have been their influence, they cannot make way in the minds and affections of the steady and the sober part of the people of this country; because our constitution shews us, that men may, with us, live happy, if they please; and the law shews equal protection, from the highest to the lowest, to all the members of our community. In the present state of our Constitution and Government, we have nothing to fear from power and authority, for the Civil Magistrate can act only on the advice of others, and they are responsible for their conduct, and they cannot give any advice but such as the law of the realm sanctions. We have full security for our freedom, for no law can be enacted which will not render every member of the legislature liable to its effect as well as the poorest subject in the realm; and the law, while it restrains vice, is also the security of virtue. There is not, in this country, one rule or measure of action for the rich, and another for the poor; both are equally governed by the law; rank, fortune, and authority, have, with us, no power to oppress the needy; every crime which one man may commit towards another is prohibited, and the aggression is punished by the law. Every grievance which a man feels, every injury he sustains, is redressed and repaired by the law.

" It is in this system of human society that true and valuable equality consists. Difference of rank and station is the certain effect of such a system; men, by superior talents and superior application, excel their neighbours, and virtue itself would be left without one of its happiest incentives, if the prudent and industrious

trious were put upon a footing with the dissipated and idle. It may perhaps seem strange to some, that a number of men should wish to adopt another form of government, but it was the observation of a very wise man, that "he who goes and tells the people that they are not governed as they ought to be, will never want hearers." The reason for it is a very plain one; the secrets that belong to a government, the difficulties and perplexities of it are great, and almost innumerable: they are also, many of them at least, inevitable, and the people at large have not sufficient judgment to consider duly of these things. Among these disadvantages, that are inseparable from every state, much mischief may be done by designing men, much mischief has been done by dwelling on imperfections which are inseparable from every human system, and by imputing all the evils which happen to a state, to the general corruption of its rulers; by which artifice the people are taught, that they ought, for their own safety, to take the government into their own hands. They would do well to consider whether any change of government could serve them. They would do well to remember, that government, even if monarchy were no part of it, must, from the nature of the thing, soon fall into the hands of a few, and the condition of the mass of the people would not be in the least improved. Under our present system, we see daily that private individuals, by the due and diligent application of their talents, acquire large fortunes, and obtain the highest ranks and honours; of the truth of this, the instances are numerous in every department. But as no state ever did, nor ever could satisfy all descriptions of men, we have had, and we still have, those who are discontented. One man thinks his merits are neglected, and imputes the fault to the government under which he lives, although, in truth, he may over-rate his value.—Others have brought themselves to indigence or embarrassment, by their own imprudence, and conceive that a general change of things will better their condition; such a description of men look to anarchy and confusion as the chance of their relief. In the due administration of the law, and the regular course of government, they can hope for no advantage. They are in haste to better their condition; they therefore wish for that disorder in the state, by which they hope, but they vainly hope, to obtain in a day, and on the sudden, that affluence and honour which is properly the reward only of a virtuous and long life. Such men have existed more or less numerously, at all times, and it has been the policy of the law of England to check and to thwart their views. To guard against such turbulent spirits, the common law, and also the statutes, have made various provisions. The ancient description of high treason, was, by the law of the land, the errors of the heart in its disaffection to the government; and the fault was shortly stated to be in the heart. But our ancestors said, most wisely,

wisely, by a subsequent statute, that a man should not be convicted of that crime for intention only; and therefore they directed, that there should be evidence of an overt act to manifest that intention, and that it should be charged in the indictment which is to contain the specific overt acts.—This was a wise and humane law, for by it the accused learns what it is he is to defend. In this exists the foundation of our law of treason, as it has been understood for ages; by it our ancestors preserved to their posterity the safety of the realm, and the liberty of the subject; under it every man is safe who keeps himself within the bounds of a defined law.

" On the 25th of Edward the III^d. I presume it is enough for me to say, that it generally provides against two or three things—compassing the death of the King—adhering to the King's enemies—giving them comfort within the realm, or without it.

" I have also now to take notice of two more statutes upon this subject, which either may, or may not be applicable to the subject which is to come before you. The one was passed in the 33d year of the present reign, entitled, " An act for the safety and preservation of his Majesty's person and government against treasonable and seditious practices and attempts," by which it is enacted, " that if any person, &c. shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maiming, wounding, imprisonment, or restraint of the King's person, his heirs and successors, or to deprive or depose him or them from the stile, honour, or kingly name of the Imperial Crown of this realm, or of any other of his Majesty's dominions or countries; or to levy war against his Majesty, his heirs and successors within this realm, in order by force or constraint to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament; or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries under the obeisance of his Majesty, his heirs and successors; and such compassings, imaginations, inventions, devises or intentions, which they or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof upon the oaths of two lawful and credible witnesses, &c. then every such person so as aforesaid offending, shall be adjudged a traitor, and shall be guilty of high treason."

" Besides any immediate attack on the King's person, there are many other acts which have been holden to be proof of conspiring against the King; such as sending letters, meeting and consulting about the means to prove to the people that they ought

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to take the government into their own hands. Any thing that necessarily tends to endanger the person of the King, is an overt act of high treason, and on this ground, consulting with foreigners on the means to procure an invasion of the kingdom; going abroad for that purpose, or with that intention; the mere hiring or taking a boat to go to the enemy with intent to prevail on them to invade this country; have each of them been solemnly determined to be overt acts of high treason. They have been so determined by the greatest Judges that ever sat in Westminster-Hall, and by some who are much renowned for their attachment to the liberty of the subject, of whom my Lord Holt was one, and who, we all know, bore a very considerable part in bringing about the revolution in this country.

" Adhering to the King's enemies, is to be defined and proved by any act which tends to strengthen the enemies of the King, or to weaken his hands. The lending money or intelligence with intent to be conveyed to the enemy, although neither such money nor such intelligence ever arrive into the hands of the enemy, is high treason. The reason is plain—the party, in such case, has done all he could: his evil intentions are manifested by his actions, and the treason is perfect, although the mischief never took effect. Another point to be observed is, that in treason there are no accessaries; all are principals. The act of one person, in pursuance of the orders of another, provided the design be treasonable, is the act of all who are concerned in the intention; all, in such case, are equally guilty.

" Indictments for high treason generally run into considerable length, because, after stating the necessary forms of law, they state all the facts which are intended to be established by evidence as proof of the general intention. These facts are called in law "overt acts;" but although many such acts are charged in the indictment, and are not proved, yet if one of them, being material, be satisfactorily proved, that is sufficient to support the indictment.

" The statute of the 33d year of the present reign is next to be taken notice of. It is "an act for more effectually preventing traitorous correspondence, or aid or assistance being given to his Majesty's enemies during the present war with France." By it is enacted, "That, during the war, if any person residing or being in Great Britain, shall, knowingly and wilfully, on his own account or credit, or on the account or credit, or by direction of any other person or persons whomsoever, or wheresoever resident, buy, sell, supply or deliver, or send for the purpose of being sold, supplied or delivered, or shall knowingly or wilfully, either on his own account, or on the account or credit, or by the direction of any other person, whomsoever or wheresoever resident or being, cause or procure it to be sold, supplied or delivered; or sent for the purpose of being sold, supplied or delivered;

vered; or authorise or direct any other person or persons, whomever or wheresoever resident or being; to send, supply, or deliver, or to send for the purpose of being sold, supplied or delivered; or shall knowingly and wilfully aid and assist in so selling, supplying, or in authorizing to sell, supply, &c. or to send for the purpose of being sold, supplied, &c. to or for the use of the persons now exercising the power of government in France, or who may exercise the power of government in France during the present war, or for the use of any armies, troops, &c. possessed by such persons, &c. or of any person residing in France during such war, &c. or to any town, territory, port or place, annexed to France, &c. or, knowingly and wilfully, buy or procure, or aid and assist in buying and procuring any arms, ordnance, &c. or any article of food, fodder for cattle, &c. or shall send any note of the bank of Eng land, bill, or any gold and silver coin, &c. of this kingdom, or of any other country; or any other article of clothing &c. without the license of his Majesty, under his sign manual, or order in council, or proclamation; such person so sending, &c. shall be declared a traitor, and shall suffer death as in case of high treason."

" Such is the substance of these modern acts: Whether they be mere affirmants of the common law, or whether they state such acts to be treason as were not such before these statutes, is not a point necessary to be now discussed. The principle of the bills is only following up that which has been often held to be treason; and as there might have been some doubts entertained by some, the legislature acted wisely in making the law plain and clear to the meanest capacity.

" Gentlemen, I am not aware that there is any commitment for mis-prision of treason to come before you; and therefore I have not detained you with any observations upon that subject.— If these few observations shall afford to you any information or relief in the discharge of your duty, in the course of your inquiry, the end and object of them will be fully answered. If they do not, I hope you will think I have not occupied any inordinate portion of your time."

F I N I S.

Ex A. & R. P.

116/05.

